

INTERVENTION
ORIGINAL



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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

JEFF HATCH-MILLER – Chairman
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2006 MAY 18 P 4: 34

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY, AN ARIZONA
CORPORATION, TO EXTEND ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY IN THE CITY OF CASA GRANDE
AND IN PINAL COUNTY, ARIZONA

DOCKET NO. W-01445A-06-0059

**MOTION TO INTERVENE
OF
RIDGEVIEW UTILITY COMPANY,
PICACHO WATER COMPANY,
LAGO DEL ORO WATER
COMPANY, AND SANTA ROSA
WATER COMPANY**

Petitioners Ridgeview Utility Company, Picacho Water Company, Lago Del Oro Water Company and Santa Rosa Water Company (collectively, the "Robson Utilities") hereby move the Arizona Corporation Commission ("Commission") for leave to intervene in the above-captioned proceeding pursuant to A.A.C. R14-3-105 and the Procedural Order issued May 11, 2006, in this docket. This motion is supported by the following facts and information:

1. Ridgeview Utility Company, Picacho Water Company, Lago Del Oro Water Company and Santa Rosa Water Company are each public service corporations providing water service to customers in Pinal County, Arizona.

2. On February 1, 2006, Arizona Water Company ("AWC") filed an application (the "Application") with the Commission seeking approval to extend its Certificate of Convenience and Necessity ("CC&N") within the City of Casa Grande and parts of Pinal County, Arizona (collectively, the "Extension Area"). The Extension Area is described in Exhibit 1 to the Application, and is depicted on the map attached as Exhibit 2 to the Application.

3. In a Procedural Order dated March 10, 2006, the Commission's Administrative Law Judge ("ALJ") set a hearing for April 27, 2006, and a deadline for motions to intervene of

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1 April 10, 2006. The Commission's ALJ issued a subsequent Procedural Order dated March 26,
2 2006, that rescheduled the hearing for May 8, 2006.

3 4. On May 4, 2006, Ms. Patricia Jo Robertson ("Robertson") filed a letter in the
4 docket opposing the inclusion of her property in the Extension Area on the grounds that she had
5 not requested water service from AWC.

6 5. The Robson Utilities and other water companies provide water service in Pinal
7 County, operating in close proximity to the requested Extension Area. On May 5, 2006, the
8 Robson Utilities filed a public comment letter in this docket opposing the extension of AWC's
9 CC&N to any property that does not have an accompanying request for service from the property
10 owner. The letter outlined the reasons why the public interest is not served by the extension of a
11 CC&N to include property which does not have an accompanying request for service, and
12 further, explains how the Application harms the interests of the Robson Utilities. A copy of the
13 May 5, 2006, public comment letter is attached hereto and incorporated herein by this reference.

14 6. On May 8, 2006, Global Water Resources, LLC, ("Global") filed public comment
15 in the docket opposing the extension of AWC's CC&N to property that does not have an
16 accompanying request for service from the property owner, and joining in the public comment
17 letter submitted by the Robson Utilities.

18 7. On May 8, 2006, the Commission's ALJ received public comment, and then
19 continued the hearing in order to allow AWC to respond to the public comments filed in the
20 docket by Robertson, the Robson Utilities and Global.

21 8. In a procedural order dated May 11, 2006, the Commission's ALJ set a May 26,
22 2006 deadline for filing motions to intervene on the limited issues outlined in the public
23 comment letters submitted by Robertson, the Robson Utilities and Global.

24 9. In this docket, AWC has submitted requests for service for approximately one-
25 half of the requested Extension Area. If approved, the Application would contravene a well-
26 established Commission policy of requiring requests for service before extending a CC&N. *See*
27 *Decision 59396*, Docket Nos. W-02074A-95-0103 (Nov. 28, 1995) (limiting Beardsley Water
28 Company's CC&N extension to that area where the company had requests for service only);

1 *Decision 68453*, Docket Nos. W-04264A-04-0438 *et al.* (Feb. 2, 2006) (determining that it was
2 in the public interest to limit AWC's CC&N extension to include only those areas where it had
3 received requests for service); *Decision 68607*, Docket No. W-01445A-05-0469 (Mar. 23, 2006)
4 (excluding Parcel 2 from AWC's extension area because the owner revoked his request for
5 service and AWC honored that request).

6 10. The Robson Utilities are directly and substantially affected by this proceeding for
7 several reasons. First, AWC seeks to extend its CC&N to significant areas where there are no
8 requests for service, which is contrary to the Commission's well-established policy on CC&N
9 extensions as set forth above. As utility providers regulated by the Commission and operating in
10 the vicinity of AWC in Pinal County, the Robson Utilities have a direct interest in the uniform
11 and equitable application of the Commission's policies, decisions and rules in this case. Second,
12 if AWC's requested extension is granted, the Robson Utilities will be forever precluded from
13 serving within the Extension Area even if one of the Robson Utilities subsequently receives a
14 request for service from a property owner within the Extension Area. AWC is attempting to
15 lock-up areas today so that AWC can serve those areas in the future when there is actually a need
16 for service. Such a ploy directly penalizes the Robson Utilities which operate in good faith in
17 Pinal County by filing requests for extensions only when the public convenience and necessity
18 requires. As significant water providers in Pinal County, one or more of the Robson Utilities
19 would anticipate receiving requests for service in the Extension Area as property within that area
20 develops. Beyond the harm that would be caused to the Robson Utilities from the grant of the
21 Application in its entirety, AWC's tactic is contrary to the public interest because it forecloses
22 the benefits that accrue to customers when multiple service providers compete for the CC&N to
23 serve an area. Such benefits include the potential efficiencies of water and sewer service
24 provided by integrated utilities such as the Robson Utilities (which AWC cannot offer) and
25 innovation in technology which naturally results from multiple providers competing for a CC&N
26 to serve an area. Third, if AWC's request is granted, this docket may establish a precedent
27 modifying the Commission's well-established policy of requiring a request for service from the
28 property owner before a CC&N is extended to include the property. The Robson Utilities have a

1 direct stake in the development of policies which impact the granting of CC&Ns to water
2 companies in Arizona. Accordingly, the Robson Utilities would like the opportunity to present
3 their position on this issue which clearly impacts all Commission-regulated water providers in
4 Arizona. For each of foregoing reasons, the Robson Utilities will be directly and substantially
5 affected by this proceeding, and the Robson Utilities should be permitted to intervene.

6 11. While many future customers in the Extension Area will miss out on the benefits
7 of an integrated water and sewer provider if the Application is granted, there is a more
8 consequential factor to consider. The grant of AWC's request would establish a water provider
9 without addressing the provision of sewer service. In fact, a property owner may find it difficult
10 or even impossible to find a stand-alone sewer provider to serve the property if AWC is
11 certificated. The Commission should consider water and sewer service in concert when
12 addressing requests to extend water company CC&Ns. The Application fails to address sewer
13 service at all. This is yet another serious problem with extending a CC&N to areas which do not
14 have requests for service. The Robson Utilities would like an opportunity to address this critical
15 issue in this docket.

16 12. The granting of intervener status to the Robson Utilities will not delay this
17 proceeding or cause the issues to be unduly broadened.

18 13. The name, address, telephone number, facsimile number and e-mail address of the
19 attorneys for the Robson Utilities, upon whom service of all documents is to be made, are:

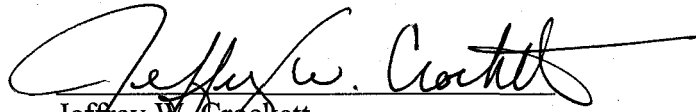
20 Jeffrey W. Crockett, Esq.
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14. A copy of this Motion to Intervene is being sent via first class mail and electronic
mail to the attorneys for AWC at the address below.

1 WHEREFORE, the Robson Utilities respectfully request that the Commission grant their
2 motion to intervene in the above-captioned proceeding.

3 DATED this 18th day of May, 2006.

4 SNELL & WILMER

5
6 

7 Jeffrey W. Crockett
8 Marcie Montgomery
9 One Arizona Center
400 East Van Buren
10 Phoenix, Arizona 85004-2202
Attorneys for Ridgeview Utility Company,
11 Picacho Water Company,
Lago Del Oro Water Company, and
12 Santa Rosa Water Company

13 ORIGINAL and thirteen (13) copies
14 filed with Docket Control this 18th
day of May, 2006.

15 COPY of the foregoing hand-delivered
16 this 18th day of May, 2006, to:

17 Yvette B. Kinsey, Administrative Law Judge
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19 Phoenix, Arizona 85007

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Utilities Division
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1 COPY of the foregoing mailed this
2 18th day of May, 2006, to:

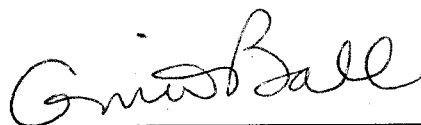
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May 5, 2006

VIA HAND DELIVERY

Yvette B. Kinsey, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

***Re: Public Comment Regarding Arizona Water Company's Application for
Extension of Certificate of Convenience and Necessity
Docket No. W-01445A-06-0059***

Dear Judge Kinsey:

I am the Manager of Ridgeview Utility Company, Picacho Water Company, Lago Del Oro Water Company and Santa Rosa Water Company (collectively, the "Robson Utilities"), and I am submitting these public comments on behalf of the Robson Utilities. The Robson Utilities each provide water service in portions of Pinal County, Arizona. The Robson Utilities oppose the initial grant or extension of a certificate of convenience and necessity ("CC&N") to any water provider which does not have a request for service covering the area requested, or at least substantially all of the area requested. It is becoming a worrisome trend for Arizona Water Company ("AWC" or the "Company") to file applications for vast extensions of the Company's CC&N without the prerequisite requests for service from the landowners. In this docket, AWC has produced requests for service covering less than half of the extension area requested. In addition, AWC recently filed another extension request covering a staggering 69,000 acres,¹ yet AWC had requests for service addressed to AWC covering less than 200 acres. See Docket No. W-01445A-06-0199. These applications violate the Arizona Corporation Commission's long-followed policy of requiring a request for service before a CC&N is extended. The Robson Utilities and other utility providers operate in Pinal County in close proximity to AWC. AWC's obvious plan to lock-up for itself the balance of the un-certificated territory in Pinal County directly harms the interests of the Robson Utilities and other providers. More importantly, these land grabs by AWC thwart the Commission's policy on CC&N extensions, and thereby adversely impact the public interest.

¹ The AWC extension request covers 108 sections.

In this case, it appears that only about one-half of the requested extension area is covered by requests for service. However, one might be led to believe from a reading of the application that AWC has requests for service covering all of the extension area. The following portions of the requested extension area do not have any requests for service:

- Parcel One: NW ¼, NE ¼, NE ¼ and NE ¼, NE ¼, NE ¼ of Section 28 and E ½, SE ¼, SE ¼ of Section 34, Township 5 South, Range 6 East.
- Parcel Two: W ½ of Section 14 and approximately the western half of E ½ of Section 15, Township 7 South, Range 5 East.
- Parcel Three: E ½ of Section 35, Township 5 South, Range 7 East; SW ¼ and S ½, SE ¼ of Section 3, NE ¼ of Section 4, All of Section 9, All of Section 16 of Township 6 South, Range 7 East.
- Parcel Four: All of Section 35, Township 6 South, Range 7 East (Ms. Robertson's property).

Not only has AWC failed to provide requests for service for all of the requested extension area, at least one land owner has specifically requested that her land not be included in the extension. Ms. Patricia Jo Robertson filed a letter with the Commission dated May 4, 2006, stating that she did not request water service from AWC, and that she is concerned about her ability to find a stand-alone wastewater provider if AWC is granted the requested extension.² Ms. Robertson specifically requested that her property be excluded from AWC's requested extension. Ms. Robertson owns approximately 640 acres consisting of Section 35, Township 6 South, Range 7 East. A copy of Ms. Robertson's letter is attached.

The Robson Utilities note that recently, AWC orally amended its application at the hearing to extend its CC&N in Docket No. W-01445A-05-0469 to exclude a parcel of property where a property owner withdrew its request for service before the hearing. AWC's Vice President of Engineering, Mike Whitehead, testified that AWC "received a letter from the developer requesting that the parcel be removed from this application and we are certainly willing to honor that." *Hearing Transcript at 33 (Docket No. W-01445A-05-0469)*. Accordingly, AWC should honor Ms. Roberson's request to exclude her section of land.

² There are several other providers of water service in Pinal County that also have companion sewer providers. In Decision 68453 (February 2, 2006), the Commission recently ruled in favor of the issuance of a CC&N to a new water company with an affiliated wastewater provider instead of AWC on the grounds that (i) the landowner had not requested water service from AWC; and (ii) "[t]he benefits of developing and operating integrated water and wastewater utilities in this instance outweigh the economies imputed to AWC's larger scale." *Decision 68453, FOF ¶ 129*.

Ms. Robertson's letter begs the question whether other property owners in the requested extension area knowingly consented to the inclusion of their properties, or whether they were even aware of AWC's application. The Robson Utilities urge the Administrative Law Judge to require a request for service for each portion of the requested extension area before recommending the extension of AWC's CC&N to include the area. This is sound regulatory policy.

It is long-established policy at the Commission that CC&Ns for water companies should only be extended in areas where companies have requests for service. In 1995, for example, Beardsley Water Company ("Beardsley") filed an application to extend its CC&N to include all of Section 25, Township 5 North, Range 3 West. *Decision 59396, Docket No. U-2074-95-103 (Nov. 28, 1995)*. Beardsley had received requests for service for the southwest quarter of Section 25, but had no requests for service for the remaining portion of Section 25. The Commission properly limited Beardsley's extension to that area where the company had requests for service, namely the southwest quarter of Section 25. In that case, Utilities Division Staff would not recommend approval of Beardsley's CC&N extension in the remaining portion of Section 25 without a request for service and a demonstration of the public need for certification. *Staff Report dated Sept. 1995 (Docket No. U-2074-95-103)*.

The Commission had occasion to reiterate this policy recently in a case where AWC filed a competing application against Woodruff Water Company (*Docket Nos. W-04264A-04-0438, SW-04265A-04-0439, W-01445A-04-0755*). Three days before the hearing, the Cardon Hiatt Companies ("Cardon") filed a letter with the Commission requesting that its property of approximately 720 acres be excluded from AWC's CC&N extension.³ During the hearing, Assistant Director Steve Olea testified that the Cardon property should be excluded, as set forth in the following exchange between the administrative law judge and Mr. Olea:

- Q. [Administrative Law Judge Marc Stern:] ... So what is the status of Staff's recommendation to the areas not requested -- that haven't requested service apparently and which would include Sandia... and then there is a number of small little sections and a couple of other sections [sic] in which part of it is that Cardon property that didn't request service apparently.
- A. [Assistant Director Olea:] Okay. Staff's opinion is that on sections 19 and 30, which I think we are referring to as the Cardon areas, there is not a request for service. Whether it's to Woodruff or to anybody, there is not a request.

³ Cardon did not intervene in the case, but its request to have its property excluded from the case was granted.

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And for a CC&N, Staff has always been in the opinion that there has to be a need for service, and without a request, there is not a need, so there is no need to have a certificate of convenience and necessity because the necessity portion isn't met.

See Transcript Vol. VII at 1415:3-18 (Aug. 4, 2005), Docket Nos. W-04264A-04-0438, SW-04265A-04-0439, W-01445A-04-0755.

The Commission properly determined that it was in the public interest to limit AWC's CC&N extension to include only those areas where AWC had received requests for service. *Decision No. 68453, FOF ¶¶ 78, 119, 129.* Areas with no requests for service, including the Cardon property, were removed from AWC's CC&N extension. *Id.*

There is a wise rationale behind the Commission's policy of requiring a request for service from the landowner before extending a CC&N to include the property. To do otherwise encourages utility companies to engage in speculative land grabs, which subverts the public interest. The merits of each extension of a water company's CC&N should be addressed at the time that there is a demonstrated need for utility service. At that time, the Commission can evaluate the financial stability and compliance status of the applicant, as well as any competing applications for the extension area. The Robson Utilities urge the Commission to exclude any lands from AWC's requested extension area which are not covered by a request for service.

Thank you for considering these comments.

Very truly yours,



Jim Poulos, Manager
Ridgeview Utility Company
Picacho Water Company
Lago Del Oro Water Company
Santa Rose Water Company

JP/jp
Enclosure

Judge Yvette B. Kinsey
ARIZONA CORPORATION COMMISSION
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cc (with enclosure) Commissioner Jeff Hatch-Miller
Commissioner William A. Mundell
Commissioner Marc Spitzer
Commissioner Mike Gleason
Commissioner Kristin K. Mayes
Robert W. Geake, Arizona Water Company
Christopher Kempley, Chief Counsel--ACC
Ernest Johnson, Director--ACC
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